CORPORATIONS — TORTS AND CRIMES — CRIMINAL LIABILITY OF A CORPORATION. — The traffic manager of the defendant company entered into an unlawful agreement with the American Sugar Refining Company, giving it a rebate on goods shipped. The defendant company was indicted and convicted under the section of the Elkins act which imputes to the corporation the act of its agent acting within the scope of his authority. *Held*, that the defendant company may be convicted. *New York Central R. R. Co.* v. *United States*, U. S. Sup. Ct., Feb. 23, 1909.

There is no doubt that a corporation may be held for a violation of a statute which merely provides that whoever intentionally does the thing complained of shall be liable. *United States* v. *Kelso*, 86 Fed. 304. The law is not so clear, however, when the *mens rea* is a necessary element. The corporation has been held liable in tort for the wilful and malicious act of its agent. *Green* v. *Omnibus Co.*, 7 C. B. N. S. 290. And a corporation may be charged with punitive damages. *Samuels* v. *Evening Mail*, 75 N. Y. 604. It would seem that under modern conditions courts will hesitate to pursue further an artificial line of reasoning, based on the idea that corporations can do no wrong because they exist only in contemplation of law. Undoubtedly, by its very terms a statute may preclude the liability of corporations under it. *People* v. *Rochester Ry. & Light Co.*, 59 N. Y. Misc. 347. But there is no reason why the state, having created a corporation, may not impute to it an evil intent and hold it for its acts. Such is the trend of the more recent decisions, as where the corporation is charged with a conspiracy in restraint of trade. *United States* v. *MacAndrews & Forbes Co.*, 149 Fed. 823.

CORPORATIONS — WHAT ACTS ARE ULTRA VIRES — CORPORATION ORGANIZED BY ANOTHER TO TAKE OVER ITS PROPERTY. — The stockholders of the defendant company passed a resolution that its board of directors should organize a new company and convey to it certain real estate belonging to the old company in consideration of the issuance to the defendant of all the capital stock of the new company, to be allotted to the defendant's stockholders in proportion to their then holdings. A non-assenting minority stockholder brought a bill in equity praying that the directors be enjoined from carrying out the terms of the resolution. *Held*, that the injunction be granted. *Schwab* v. *E. G. Potter Co.*, 40 N. Y. L. J. 2495 (N. Y. Ct. App., March 2, 1909).

If corporations could create new bodies to carry on their business, there might soon exist an endless chain of companies that would seriously prejudice the rights of minority stockholders. Clearly no reason exists for implying such a power as necessary to corporate existence. *Elyton Land Co.* v. *Dowdell*, 113 Ala. 177. Indeed the proposed scheme would have been *ultra vires*, even though the directors had merely been authorized to purchase shares in a corporation to be formed; for a corporation may not as a general rule become a stockholder in another corporation unless authorized by statute or by charter. *People ex rel. Moloney* v. *Pullman Co.*, 175 Ill. 125. The facts in the principal case do not bring it within the exception to this rule, for the stock here was not to be taken as payment or security for a debt. *Memphis R. R.* v. *Woods*, 88 Ala. 630; *Bank of India's Case*, L. R. 4 Ch. 252. It would seem, however, that such a scheme might be good as a means of dissolving the company if a non-assenting shareholder could at his option decline the new stock and get in cash the value of his share of the assets of the old company. · *Treadwell* v. *Salisbury Mfg. Co.*, 7 Gray (Mass.) 393.

DAMAGES — MEASURE OF DAMAGES — REMEDIES OF SERVANT ON WRONGFUL DISCHARGE. — The defendant contracted to employ the plaintiff for a term of five years at a yearly salary payable in monthly installments. After a few months' service the plaintiff was wrongfully discharged. He brought an action on the contract for such damages as he had sustained and might sustain up to the date of the trial, but without prejudice to his right to sue for damages subsequently accruing. Judgment was recovered for the amount of his salary to the time of trial. Before the expiration of the term

he brought a second action for damages accrued since the first trial. *Held*, that the former judgment is no bar to recovery. *Canada-Atlantic & Plant S. S. Co.* v. *Flanders*, 165 Fed. 321 (C. C. A., First Circ.).

The main case apparently marks the first appearance of the doctrine of "constructive service" in the federal courts. It is to be regretted that after the repudiation of this doctrine in England and in the majority of our states another case should be added to the few in its support. For a discussion of the principles involved, see 14 HARV. L. REV. 294; 12 *ibid.* 435. Confusion seems to have arisen in treating the case as one of anticipatory breach.

DANGEROUS PREMISES — LIABILITY TO TRESPASSERS — CHILD TRESPASSER ON TURNTABLE. — The plaintiff, a boy of four or five years, entered the defendant's premises through a gap in its boundary hedge. While playing with companions on the defendant's turntable, which was not fastened, the plaintiff was injured. The jury found that the hedge was in a defective condition through the defendant's neglect. *Held*, that the defendant is liable. *Cooke* v. *Midland Great Western Railway*, 53 Sol. J. & Wkly. Rep. 319 (Eng., H. L., March 1, 1909).

This decision reverses that of the lower court, commented upon in 21 HARV. L. REV. 57. The case is noteworthy as being the first turntable case in the English courts, and as committing them to the rule of the weight of American cases — a result perhaps not to be expected. Though the report is rather meager, it would seem that the House of Lords has adopted without demur the fiction of "implied invitation," "allurement," and "attractive premises."

ESTOPPEL — ESTOPPEL IN PAIS — ACKNOWLEDGMENT OF LIABILITY ON CERTIFICATE OF DEPOSIT. — The defendant bank issued a non-negotiable certificate of deposit to A, who assigned to B, who assigned to the plaintiff. Later, the defendant told B that the certificate would be paid. On suit brought, the defendant claimed a banker's lien to satisfy claims against A. *Held*, that since the defendant would be estopped to deny its liability as against B, it is estopped in this suit in order to avoid circuity of action. *Old National Bank* v. *Exchange National Bank*, 26 Banking L. J. 119 (Wash., Sup. Ct., Sept. 24, 1908).

To raise an estoppel by misrepresentation there must be a misstatement of past or existing facts. A mere statement of intention is not enough. *Chadwick* v. *Manning*, [1896] A. C. 231; *Langdon* v. *Doud*, 10 Allen (Mass.) 433. Many instances where this rule is seemingly disregarded are in reality cases rather of contractual obligation than of pure estoppel. See *Coles* v. *Pilkington*, L. R. 19 Eq. 174, 177; EWART, ESTOPPEL BY MISREPRESENTATION, 69. The defendant bank's statement that it would pay the certificate is a mere statement of intention which is not binding in the absence of consideration. Moreover, in all cases, the one claiming the estoppel must have relied on the misrepresentation to his damage. *Simm* v. *Anglo-American Telegraph Co.*, 5 Q. B. D. 188, 211. So, where the maker of a promissory note makes an assertion to one who has already purchased it, that he has no existing defense against the note, he is not thereafter estopped from setting up such a defense, since no damage has been suffered in reliance on the assertion. *Windle* v. *Canaday*, 21 Ind. 248; *First National Bank* v. *Chaffin*, 118 Ala. 246. Hence the defendant in the principal case should not be estopped as against B, and *a fortiori* there should be no estoppel as against the plaintiff to whom no representation whatever was made.

FEDERAL COURTS — JURISDICTION BASED ON NATURE OF SUBJECT MATTER — JOINT ACTION INVOLVING FEDERAL QUESTION. — A joint action was brought against a railway company, its engineer, and fireman, for causing the death of the plaintiff's husband. The company had been created by Act of Congress, while the co-defendants and the plaintiff were citizens of a single state. Application was made for a remission of the case from the federal to the state court. *Held*, that as a federal question is involved, the federal court has jurisdiction. *Matter of Dunn*, 212 U. S. 374.